

The definition of medical appliance is "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body." See 86 Ill. Adm. Code 130310(c)(2). (This is a GIL.)

May 22, 2007

Dear Xxxxx:

This letter is in response to your letter dated May 18, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to inquire on the taxability of medical devices sold by ABC.

We sell to doctors, hospitals, and home health care companies. These devices are not sold directly by ABC to the patients. All products contain the warning. 'Caution: Federal (USA) restricts this device to sale by or on the order of a physician.'

ABC major products lines are as follows:

Port - a - Cath:

The Port-A-Cath is a totally implantable port and intravenous catheter system designed to support the venous circulation and permits repeated access.

Needles:

Non-coring access needles used for injections. These needles are required for use with the Port-A-Cath system.

Computerized Ambulatory Delivery Device:

This device is a portable infusion pump that provides a system for administering medication.

Cassettes and Administration Sets:

Cassettes are disposable casing for medication storage. These cassettes are designed to be used exclusively with the infusion pumps. The disposable administration set is designed to be used to deliver fluid from a remote bag or sterile vial.

Catheters:

- a - Peripherally inserted central catheters for administration of therapies such as antibiotics, TPN, hydration and chemotherapy agents.
- b - Intravenous catheters for repeated central venous access for injection or infusion therapy and/or blood sampling.
- c - Catheters for vascular access for hemodialysis.

There are different models of the above products designed to meet the various needs of the patients. I have enclosed literature describing some of the models in our major product lines. Additional information on our products can be found at our website - www.smiths-medical.com.

Please review the information and literature we have provided and forward a written ruling on the taxability of our products.

DEPARTMENT'S RESPONSE

For your general information we refer you to the Department's regulation at 86 Ill. Adm. Code 130.310 regarding the taxation of Food, Drugs, Medicines and Medical Appliances. Items of tangible personal property that qualify as food, drugs, medicines and medical appliances are taxed at the low tax rate of 1% plus applicable local taxes. Those items that do not qualify for the low rate are taxed at the rate of 6.25% plus applicable local taxes. The definition of medical appliance is "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body." See 86 Ill. Adm. Code 130.310(c)(2).

Generally speaking, catheters which directly substitute for a malfunctioning part of the human body will qualify for the low rate of tax. The types of catheters subject to the low rate of tax include, for example, drainage catheters, lifecath catheters, mahukar catheters, neurological catheters, peritoneal catheters, permcath catheters, and urological catheters.

Catheters which do not directly substitute for a malfunctioning part of the human body, but are instead used for treatment or diagnostic purposes do not qualify for the low rate of tax. They include, for instance, diagnostic angiographic catheters, dual lumen right atrial catheters, interventional angiographic catheters, single lumen right atrial catheters, and triple lumen right atrial catheters.

To the extent that the items that you sell are sold to a purchaser for resale and not for use or consumption by that purchaser, you are not required to collect or remit sales or use taxes on the sale. If it is a sale for resale, the seller can accept a resale or registration number and Certificate of Resale from the purchaser as evidence that the purchase is a purchase for resale. See 86 Ill. Adm. Code 130.1401. Items that you sell that meet these criteria may be sold tax-free if you comply with the sale for resale requirements of Section 130.1401.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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